

GENERAL SERVICES ADMINISTRATION

Washington, DC 20405

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FIRMR BULLETIN C-26

TO: Heads of Federal agencies

SUBJECT: Vendor complaints and agency protests

1. Purpose. This bulletin provides suggestions and guidance on how agencies may improve their procedures for reducing and resolving vendor complaints and agency protests of FIP resources contracting actions.

2. Expiration date. This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. Contents.

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4. Information and assistance.

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5. Discussion. This bulletin was developed as a result of reviewing protests filed at the General Services Administration Board of Contract Appeals (GSBCA); holding discussions with agency and industry representatives; reviewing comments received from Federal agencies in response to a GSA letter; reviews of existing practices that are successful in various agencies; and reviews of acquisition issues that have been the basis for many GSBCA protests. GSA found through its reviews that agency procurement decisions that are well thought out and documented are more likely to be upheld.

TC 90-1

FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATION
APPENDIX B

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This bulletin provides suggested guidelines for reducing and resolving complaints and agency protests resulting from FIP resources contracting actions. The information in this bulletin is guidance and may be used in conjunction with Federal Acquisition Regulation (FAR) subpart 33-1 as it pertains to agency level protests.

6. Reducing vendor complaints and agency protests.

a. Agencies should establish and periodically review their formal procedures for processing and resolving vendor complaints and agency level protests. The objectives of the procedures should be to:

- (1) Build confidence in the agency's acquisition system.
- (2) Provide both the agency and the vendor maximum information regarding their respective positions.
- (3) Reduce the need to file protests at the GSBICA or the General Accounting Office (GAO).

b. Agency procedures should ensure compliance with acquisition regulations. Practices to be considered include:

(1) Allowing sufficient time for acquisition planning to permit maximum practicable participation by industry.

(2) Providing for review of acquisition plans, specifications, and solicitations by agency technical, contracting, and legal staffs prior to issuance and throughout the acquisition process. The reviews should:

(i) Verify that requirements analyses, conversion studies, market surveys, analyses of alternatives, internal and external delegations of procurement authority, and other documentation are sufficient.

(ii) Validate technical, management and workload requirements; verify that technical and workload requirements and evaluation criteria are consistent; and that requirements that may limit competition are justified.

(iii) Consider the use of options for requirements that may not be generally available from industry.

(iv) Verify that the evaluation process and contract file, including reviews of complaints and protests, are documented.

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(v) Include a review before award to determine if there are complaints/issues that have protest potential.

(3) Creating a contracting environment that encourages vendors to resolve complaints and protests at the agency level by:

(i) Sending draft specifications or solicitations to industry for comment.

(ii) Providing a contracting schedule that allows time for answering vendor questions and amending solicitations and allows vendors adequate time to respond.

(iii) Giving consideration to complaints and protests to determine if they have merit. Taking corrective action as necessary.

(iv) Conducting meaningful negotiations.

(v) Treating all vendors equally.

(vi) Permitting communications between agency officials and vendors by allowing vendors an opportunity to explain complaint and protest issues and agency officials an opportunity to explain their positions.

(vii) Releasing maximum information allowable under law during vendor debriefings.

(viii) Providing timely and informative notice to vendors eliminated from the competitive range.

7. Processing vendor complaints and agency protests:

a. Resolve complaints and protests at the lowest possible organizational level, regardless of the level at which the complaints or protests are initially filed.

b. Review and answer protests as soon as possible, usually within twenty to thirty workdays.

c. Stay the award of a contract in those circumstances specified in the acquisition regulations.

d. Before a protest is denied, the protest issues and decision should be reviewed by an official above the contracting officer. Among the alternatives that agencies may consider for conducting a review above the contracting officer are an agency review panel; referral to a reviewer outside the contracting activity; or review by a solicitation ombudsman. The reviewer should:

(1) Have access to technical and contracting expertise to review protest issues.

(2) Have authority to make (or obtain approval for) changes in the contract action, if it is found that corrective action is appropriate.

(3) Coordinate protest issues with agency counsel.

8. Cancellation. FIRMR Bulletin 71 is canceled.

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